



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

October 18, 1984

You request a ruling regarding the application of the Massachusetts sales tax to sales of water saving devices by Massachusetts municipalities and water districts. The Department of Environmental Quality Engineering, an agency of the Commonwealth, is conducting a grant program which provides funds for municipalities and water districts to distribute the water saving devices at cost to water consumers. The municipalities and water districts intend to sell the devices in each community until all customer demand is met. You inquire whether such sales are exempt because the municipalities and water districts are not engaged in selling the devices for profit or because the sales are casual and isolated.

Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on all retail sales of tangible personal property in Massachusetts, unless otherwise exempted.

A vendor is defined as "a retailer or other person selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of tax imposed by [Chapter 64H]." (G.L. c.64H, §1(18)).

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A retailer is defined, inter alia, as "[t]he commonwealth, or any political subdivision thereof, or their respective agencies when such entity is engaged in making sales at retail of a kind ordinarily made by private persons." (G.L. c.64H, § 1(9)(e)). Water saving devices are ordinarily sold by private persons.

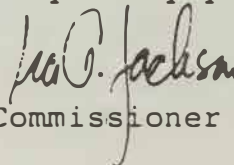
The term "business" is defined as "any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect." (G.L. c.64H, § 1(1)). The term is only used in defining what is a sale for resale, not in defining a taxable retail sale. (See G.L. c.64H, § 1(13)).

A municipality or a water district is a retailer if it sells water saving devices. The fact that the municipalities and water districts are not engaged in sales for profit does not alter the character of the sales as taxable retail sales.

Section 6(c) of Chapter 64H exempts from the sales tax "[c]asual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail...." The Massachusetts Sales and Use Tax Regulation on Casual and Isolated Sales defines casual and isolated sales as "those of an infrequent, non-recurring nature made by a person not engaged in the business of selling tangible personal property." (830 CMR 16.01).

The municipalities and water districts intend to sell more than one or two water saving devices. The sales will occur over a period of weeks or months. The municipalities and water districts meet the definition of a retailer, and the sales are not of an infrequent or non-recurring nature made by an entity not in the business of selling tangible personal property. Therefore, the sales are subject to sales tax.

Very truly yours,



Commissioner of Revenue

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